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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. 85-395

A. L. LOCKHART, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION ..... *Petitioner*

vs.

CARL ALBERT COLLINS ..... *Respondent*

REPLY BRIEF FOR PETITIONER

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FORMS MANAGEMENT COMPANY

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On November 6, 1985, respondent Collins filed his brief in opposition to petitioner Lockhart's petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit. Lockhart wishes to reply to Collins' brief in response.

With respect to the procedural bar argument, Collins has missed the point entirely. Collins says that there was no procedural bar to the Eighth Circuit's consideration of this argument. There was a procedural bar: Collins' objection at trial to pecuniary gain as an aggravating circumstance was not explicit enough to inform the trial court or the Arkansas Supreme Court that Collins felt his Eighth Amendment rights were being violated. Collins' ambiguous objection, at page six of his brief, could be grounded in Fifth Amendment former jeopardy concerns or in Fourteenth Amendment due process concerns. As Collins notes in his brief, in Arkansas objections at trial must inform the trial court of the nature of the objection, even in death penalty cases. Arkansas has no "plain error" rule for appeals of death sentences. *See Sumlin* v. *State*,

273 Ark. 185, 192, 617 S.W.2d 372, 376 (1981). If the objecting party does not inform the Court of the nature of the objection, the objection is waived. Collins' objection is not explicitly grounded in the Eighth Amendment concern the Eighth Circuit addressed in its opinion. Because Collins' objection was not sufficiently explicit regarding an Eighth Amendment basis for his objection, the objection was waived and therefore barred from federal habeas corpus review.

Lockhart also notes that, since he filed his petition for certiorari, the Arkansas Supreme Court has interpreted its present robbery statute, Ark. Stat. Ann. §41-2103 (Repl. 1977) and held that the State need not prove the value of the property taken from the victim to obtain a capital murder conviction where robbery is the underlying felony. *Novak* v. *State*, No. CR 85-106, slip op. at 2 (Nov. 4, 1985). Lockhart also notes that Delaware permits the use, in felony murder cases, of an element of the crime as a statutory aggravating circumstance. *Whalen* v. *State*, 492 A.2d 552, 565-66 (Del. 1985) (rape). If Delaware, Arkansas and the other six states that permit this practice reverse themselves and follow the Eighth Circuit's analysis in *Collins*, capital sentencing law in these states will be distorted because of the Eighth Circuit's mistaken evaluation of pecuniary gain as an element of the crime in Arkansas robbery-murder cases.

CONCLUSION

For the reasons stated in the petition and this reply brief, the petition for writ of certiorari should be granted.

Respectfully submitted,

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